

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,810

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision of the Department to terminate her ANFC benefits based upon excess family income and resources.

FINDINGS OF FACT

1. The petitioner is a disabled recipient of SSI and the mother of four minor children. The three youngest children currently live with her and until recently she has received ANFC for the older two of those children who are the offspring of her ex-husband. Her youngest child is the son of her current companion.
2. Her current companion owns her dwelling and spends at least half of his time there with her and their child. He contributes to the support of their son, both financially and emotionally. Although he has a different domicile, the petitioner does not claim that he is absent from her home.
3. Recently the petitioner, who was randomly placed in Group 2 for ANFC purposes, was notified that her companion's income had to be counted in determining the family's income because he is present in the household. The use of the companion's \$1592.29 monthly income, caused the four person household (the petitioner herself is excluded from the assistance unit because she receives SSI) to be some \$300 over income for an ANFC payment. The petitioner was notified July 19 that her ANFC benefit of \$616 would cease as of August 1, 1995 because of excess income.
4. The petitioner does not dispute the accuracy of the figures used, the calculations performed or the formulas employed by the Department. Rather she appeals the determination because she believes it is unfair, in effect, to require that her companion support the children to whom he is neither father nor step-father. She also claims that such a requirement discriminates against her as a disabled person because she, unlike non-disabled ANFC recipients, is unable to go out and obtain a job in order to avoid the harsh effect of using a companion's income. She wants her grant recalculated using only the income of her two older children as she believes it would have been done if she were placed in ANFC Group 1. She does not seek ANFC for her youngest child, fathered by her current companion.

## RECOMMENDATION

The Department's decision should be affirmed.

## REASONS

On July 1, 1994, the Department implemented the "Welfare Restructuring Project", a demonstration project which randomly divides recipients into three groups with different eligibility requirements in certain areas, including work requirements, in order to compare the outcomes and determine which methodology will "enable more ANFC families to achieve self-sufficiency by strengthening families and increasing parental responsibility, by rewarding work and promoting self-support, and by putting a limit on how long families can receive welfare before a parental work obligation begins". W.A.M. 2208.1.

The petitioner was randomly placed in "Group 2" status. Under the restructuring regulations, Group 2 would

. . . have its eligibility for and amount, if any, of ANFC benefits and Reach Up requirements determined according to policies designated herein as applying to Group 2 and to all other policies contained herein that are not superseded by the policies that apply to Group 2. Requirements relating to the Reach Up program that were in effect on June 30, 1994, and have not been changed or eliminated by rule subsequent to that date remain in effect for assistance groups assigned to Group 2.

Group 2 will consist of at least 25 percent of ANFC applicant or recipient assistance groups not assigned to Group 1.

W.A.M. 2208.1(2)

On December 1, 1994, five months following implementation of this restructuring project, the regulations defining "assistance group" for ANFC purposes were revised to read as follows:

An "assistance group" is defined as one or more individuals whose requirements, income and resources are considered as a unit to determine need for ANFC.

An ANFC assistance group must include one or more eligible dependent children. In addition, the assistance group must include all siblings (including half-siblings) who live with the dependent child or children, who meet one of the deprivation factors according to WAM 2330-2339 and who qualify under the ANFC age criteria, as defined in policy.<sup>(1)</sup> If the family assignment is Group 2 or 3, a child is considered an eligible dependent child under the unemployment deprivation factor, even if one or both parents are employed full time. The parent(s) of each child included in the ANFC assistance group must be

included in the ANFC assistance group if he or she lives in the home with the children.

W.A.M. 2242

(emphasis supplied to show revisions)

Under regulations formerly in existence, the petitioner's companion and their common child could not be included in the ANFC group unless one of the criteria in footnote one were met. See W.A.M. 2242, effective July 1, 1994, Bulletin No. 94-12. This is still true for persons placed in Group One.<sup>(2)</sup> However, those in Groups 2 and 3 are exempted from the above criteria. The regulations defining "unemployed parent" were also revised on December 1, 1994, to further underscore the change:

An unemployed parent is either a parent in Group 1 whose minor children are in need because he or she is not working at all or is working part time or a parent in Group 2 or Group 3 who is working full time, part time, or not at all . . .

W.A.M. 2333.1

The regulations most recently adopted have, in effect, waived the definition of deprivation formerly found in the regulations and broadened the category of unemployed parents to include fully employed parents for recipients who are in Group 2 or Group 3. The petitioner, as a member of a Group 2 family must include all of her children in her ANFC assistance group including her child who is actually being supported by its working father. Under the regulation cited at W.A.M. 2242 above, that child's father must also be included in the assistance group as long as he is living in the home with the petitioner and her children.

Inasmuch as the Department's decision to include the petitioner's youngest child and that child's father in the group, as well as the father's income, is consistent with its revised regulations, the Board is bound by law to affirm unless the petitioner can show that the regulation is illegal. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

The petitioner argues that the law is illegal as applied to her because she is disabled. She believes an exception should be made for all disabled persons and that they should be put into Category One. In that case, her companion's income would only be counted during periods when he is not employed.

The facts show that the petitioner is not being treated any differently from any other recipient. She was randomly assigned to the Group and was not placed in it because of any particular characteristic of her own. If the petitioner has a claim as a disabled person, it would be based on a violation of her rights under the Americans with Disabilities Act (ADA).

The ADA at 42 U.S.C. § 12132 provides that:

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

In this case there is no dispute that the Department is a "public entity" within the meaning of the Act. See 42 U.S.C. § 12131(1) and Fair Hearing No. 11,260. There is also no dispute that the Department, as a recipient of federal funding, is also subject to the similar anti-discrimination provisions of section 504. See 29 U.S.C. § 794. The Department also does not dispute that the petitioner meets the ADA definition of "disability". See 42 U.S.C. § 12102(2).

The petitioner maintains that causing her companion's income to be included when calculating the

benefits due to her older children puts her at a disadvantage with regard to her eligibility vis-a-vis non-disabled recipients. Section 12131(2) of the ADA provides:

The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the public entity.

A crucial question in these cases is whether the petitioner, were it not for her disability,

"meets the essential eligibility requirements" of the pertinent ANFC regulations. If so, 28 C.F.R. § 35.130(b)(7) provides:

A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

The petitioner in this matter rather than being barred

from eligibility because of her disability, has established through her disability that her children are categorically eligible for ANFC. (See footnote 1) There is nothing in her disabling condition which has caused or prevented her from meeting essential eligibility requirements for Group 2 ANFC recipients. If her disability were not present she would not be in any better position to prevent the inclusion of her companion's income in her household calculations than she is now.

The fact that the petitioner might be able to work and avoid ANFC dependency altogether if she were not disabled begs the question. The ANFC program is designed to help parents who have difficulty supporting their children by giving them financial aid and encouraging and assisting "individuals and families to contribute materially to their own self-sufficiency whenever practicable". W.A.M. 2200S. The regulations recognize and extend assistance to parents who are unable to support their children for a number of reasons, including disability, single-parenthood and unemployment. W.A.M. 2330. The petitioner was determined to have difficulty with such support both because her older children's father is out of the home and because she is disabled. In her inability to support her children, the petitioner is no different from other persons who are receiving ANFC although her ability to eventually become self-sufficient may be more limited. Obviously, anyone who can get off of ANFC is not subject to any of its rules. However, the petitioner's argument assumes that all non-disabled recipients are able to immediately get off ANFC by working, as she cannot. That assumption is a fallacy.

The petitioner offered no evidence that her random inclusion in Group 2 has blocked her meaningful access or an effective opportunity to participate in the ANFC program based on her disability. Therefore, that argument must be rejected and the Department's action must be upheld.

1. Eligibility for ANFC requires establishing that a child is deprived of parental support or care for one of the following reasons and that the income and resources available to the parent in custody of the child and the child are insufficient to meet the child's total needs according to Department standards:

1. Death of a parent;
2. Continued absence of a parent;
3. Physical or mental incapacity of a parent;
4. Unemployment - (ANFC-UP).

W.A.M. § 2330

2. See Bowen v. Gilliard, 55 USLW 5079 (U.S. Supreme Court, 1987).